

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
WESTERN DIVISION

JOHANZ X. SANTOS, ppa, DENISE)	C.A. NO.: 03-cv-12210-KPN
COLON, Individually, JESUS SANTOS,)	
Plaintiffs)	
)	
VS.)	
)	
BOB'S DISCOUNT FURNITURE,)	
REGENT HOME DELIVERY,)	
AGNILIZ ACOSTAS, RAUL SANTOS,)	
Defendants)	

DEFENDANT, BOB'S DISCOUNT FURNITURE, INC.'S,
OBJECTION TO THE PLAINTIFF'S MOTION TO COMPEL

The Defendant, Bob's Discount Furniture, opposes the Plaintiff's Motion to Compel the Defendant to produce the truck for a variety of reasons. First, the Court, back on September 24, 2004, established a Scheduling Order. In that Order all written discovery was to be served by 12-30-04. A Request for Production is written discovery and the Plaintiff should have done this prior to the December deadline. Further, the Plaintiff never served a proper Request that would comport with Fed.R.Civ.P. Rule 34. The Plaintiff merely on April 5, 2005, sent a letter to the Defendant demanding the immediate production of the vehicle or another similar vehicle. A copy of said letter is attached hereto. A formal Request for the Production of Documents or Things or the Entry to View the Subject was never made or even attempted to be made as required by Rule 34. The Rule specifically allows a thirty (30) day period for the opposing party to respond. The Plaintiff totally disregarded the procedures contained in Rule 34 and the Scheduling Order of the Court.

If the Plaintiff wished to extend the time or to ask the Court for leave to do further discovery this should have been done at the Case Management Conference on March 18, 2005. At that time the Court specifically asked what was left to do by way of discovery and it was reported to the Court that the only thing left outside of experts was the deposition of the three Plaintiffs which were scheduled for the following week. At no time did the Plaintiff's attorney mention the need for further discovery or ask the Court for leave to make this Request. Instead the Plaintiff waited until the eleventh hour to make an informal request for the Defendant to take a delivery truck out of service for scheduled deliveries for the Plaintiff's convenience.

It seems patently unfair that the Defendant should have to jump through hoops because of the Plaintiff's tardiness and failure to comply with this Court's Scheduling Orders and the Rules of Civil Procedure.

It is therefore respectfully submitted that the Court should deny the Plaintiff's Motion to Compel.

THE DEFENDANT,
BOB'S DISCOUNT FURNITURE
By Its Attorney

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